



Land Forum Meeting

25th June 2014 Meeting Notes

Location: NHBC, Fifth Floor, 80 Leadenhall Street, London EC3A 3DH
11am – 4.00pm

FINAL

Present:

Seamus Lefroy Brooks (<i>Chair</i>)	
Nicola Harries (<i>Secretariat</i>)	Contaminated Land: Applications In Real Environments (CL:AIRE)
David Middleton	Defra
Maggie Charnley	Defra
Matthew Whitehead	Environment Agency
Jonathan Atkinson	Environment Agency
Simon Firth	Society of Brownfield Risk Assessment (SoBRA)
Frank Evans	The Soil and Groundwater Technology Association (SAGTA)
Howard Price	Chartered Institute of Environmental Health (CIEH) (part of meeting only)
Chris Taylor	Brent Council
Julia Thrift	Town and Country Planning Association (TCPA)
Phil Crowcroft	Specialist in Land Condition Register (SiLC)
Euan Hall	Land Trust (LT)
Lisa Hathway	National House Building Council (NHBC)
Matthew Llewellyn	Natural Resources Wales
Richard Clark	Welsh Government
Andrew Wiseman	UK Environmental Law Association (UKELA) and Environmental Protection UK (EPUK)

By telephone:

Theresa Kearney	Environment Agency, Northern Ireland (part of meeting only)
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Invited:

Mike Smith	Independent Consultant/BSI
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Apologies:

Richard Boyle	Homes and Communities Agency (HCA) and Voluntary Contaminated Land Fora
Tim Elliott	Royal Institute of Chartered Surveyors (RICS)
Paul Sheehan	Environmental Industries Commission (EIC)
Peter Witherington	Home Builders Federation (HBF)
Max Rathmell	Leeds City Council
Stephen Moreby	Gloucester City Council
Caroline Thornton	Scottish Environment Protection Agency (SEPA)
Peter Johnson	UK Contractors Group/UK Strategic Forum for Construction
Nicky Linihan/John Silvester	Planning Officers Society
Helen Keen	Communities and Local Government (CLG)
Richard Clark	Welsh Government
Rob Ivens	Mole Valley Council
Mark Edwards	Lancaster Council
Trystan James	Natural Resources Wales

Agenda

1. Welcome and Apologies
2. Introductions of represented organisations
3. Review of Previous Actions
4. Update from Defra Soil and Contaminated Land Team
5. Update from CLG Meeting
6. Discussion Topic – Raising Standards: Industry protocol for Land Affected by Contamination – proposed scheme.
7. Presentation by Mike Smith on “How British Standards Institute works and how the Land Forum can be more involved and track the development of new standards”
8. AOB- C4SLs & Land Forum
9. AOB Brownfield First Policy
10. Future Direction of Land Forum
11. Any other AOB
12. Date of Next Meeting

Meeting Notes

1) Welcome & Apologies

Seamus Lefroy Brooks (SL-B) welcomed everyone and apologies were given. He thanked NHBC for hosting the meeting.

2) Introductions of represented organisations

Introductions were performed around the table.

3) Review of Previous Actions

All actions were completed or were addressed by agenda items for discussion.

4) Update from Defra Soil and Contaminated Land Team

David Middleton (DM) updated the forum in relation to the anticipated contaminated land contingency fund. This followed Lord de Mauley's announcement in December that Defra would no longer be supporting the costs of investigating and remediating contaminated land through the Contaminated Land Capital Grants Scheme. There has been a delay in announcing whether or not a fund could be made available but it is anticipated that Local Authorities would be contacted within the next 2-3 weeks with an update.

Maggie Charnley (MC) confirmed that the Soil Framework Directive has been formally withdrawn however Defra are waiting to hear from the European Union what action may be taken instead as the EU still intend to take EU level action on soils.

MC provided an update from the recently attended *Land as a Resource* conference which the EU provided some indication of their direction of travel in the near future.

MC confirmed that the European Commission intended to launch a public consultation on Land as a Resource in the coming month(s), however the timing of this is currently unclear. There was a lot of discussion about land sealing/ land take and it seemed likely that some sort of target will be proposed, but at present it is unclear what form that would take and whether it would be binding or not.

The European Commissioner for the Environment Janez Potočnik introduced the day. He referred to the need for a 'prudent and rational' land use policy, and the need to reconcile competing interests. He set out four axes for action by the EU:

- 1) Recognise that land is a finite resource and should be used for as many purposes as possible, 'multi-functionality', which could include setting targets for reducing land take (he suggested these could be purely indicative like Germany, which has an aspirational target of reducing from 120 to 30 hectares per day by 2030, or something firmer);
- 2) Avoid land wastage by preventing land degradation. In withdrawing the Soil Framework Directive, he said that the Commission had underlined that it remains committed to soil protection and will be examining options to achieve this. He said that under the 7th Environment Action Programme (EAP), Member States had agreed to examine how soil issues could be addressed in a binding legal framework. He said that there is work to be done in the EU to map and assess ecosystems and services to help inform decisions on land use and planning at different levels;
- 3) Actively restore degraded land and encourage recycled land including supporting regeneration of brownfields. Again, he mentioned the possible land target mentioned earlier, which will be explored by the Commission in line with 7th EAP;
- 4) Address the impact of domestic EU policies on land degradation outside the EU.

The full text of Potočnik's speech can be accessed by following the link here: http://europa.eu/rapid/press-release_SPEECH-14-477_en.htm

MC continued to explain that other notable discussions through the day were around the sustainable intensification of agriculture, the potential for wider hydro-geological impacts of land use and soil management, the importance of valuing natural capital, the significant impact of affluent diets and food waste on land use and the need to consider exported land use (both morally and with a view to food security). Biofuels targets were also mentioned, in the context of competing uses for land.

MC explained that in light of the Soil Framework Directive (SFD) being withdrawn Defra intended to complete their analysis to support the impact assessment as if it was to be implemented in preparation of ongoing discussion that are being had on future soil policy direction.

MC was asked whether Defra had briefed CLG on any of the issues that were discussed at the *Land as a Resource* conference? MC confirmed that if "land take targets" were introduced then this would be of particular interest to CLG and a government policy decision would be taken which would require cross departmental discussions.

5) Update from CLG Meeting

Unfortunately CLG were unable to attend the Land Forum meeting and provide an update of their activities due to lack of resources. Helen Keen from CLG has now moved on but Peter Ellis is keen to maintain engagement.

Defra offered to provide an update on behalf of CLG if this was of interest. Nicola Harries (NH) will make this offer to CLG for future meetings.

ACTION: NH

There was also discussion whether HCA would be able to provide an update of CLGs activities in future on their behalf as they are working so closely together now. NH to check with HCA.

ACTION: NH

SL-B explained that a small group of individuals recently met CLG following the last Land Forum meeting. The minutes from that meeting were circulated to members and can be accessed by following the link:

http://www.claire.co.uk/index.php?option=com_phocadownload&view=file&id=417&Itemid=230

The main issues discussed were signposting C4SL project through planning guidance and difficulties that local contaminated land officers have with permitted development and the lack of safe guards.

****POST MEETING NOTE: Richard Clark provided details of how C4SLs are referenced in planning under Planning Policy Wales****

Use of Category 4 Screening Levels in planning under Planning Policy Wales

38. The Part 2A regime and the planning regime are inter-linked such that Planning Policy Wales states that planning policies and decisions should be consistent with Part 2A. The Part 2A Statutory Guidance and accompanying IA were developed on the basis that C4SLs could be used under the planning regime, as they would be in Part 2A investigations directly. The estimated benefits that were expected to accrue from the changes to the Part 2A Statutory Guidance and specifically from the use of the new C4SLs were based on this assumption. The planning position is that the C4SL may provide a useful means of assisting local planning authorities in deciding whether land is suitable for its proposed use.

The full document can be accessed via the following web link:

<http://wales.gov.uk/topics/environmentcountryside/epg/contaminatedland/screening-levels-contaminated-land-assessment-/?lang=en>

6) Discussion Topic – Raising Standards: Industry protocol for Land Affected by Contamination – proposed scheme.

SL-B outlined the idea of developing an industry protocol/quality mark sign off for reports (products) that are produced relating to land affected by contamination. As had been discussed in earlier Land Forum meetings, a small subgroup was formed and met to discuss what was realistic for industry to accept, that recognised quality work, would achieve a standard and would be accepted by the regulator.

SL-B discussed the outline paper that had been produced and circulated prior to the meeting and that is appended to these minutes.

Matthew Whitehead (MW) explained that from the Environment Agency's point of view, it is going to be difficult for them to provide quality services as they are under a lot of pressure to deliver with diminishing resources. They wish to continue to support Local Planning Authorities (LPA) but are keen to investigate if they can develop a scheme that can ensure that they use their limited resources more effectively. They want to maintain

the protection of the environment but to channel their resources to the higher risk areas. Therefore they are keen to work with industry to bridge the gap that could occur if they have to pull back some of their front line resources relating to planning consultation. The EA role as regulator will be to meet the Water Framework Directive where things need to address contamination.

The EA would like to improve quality of submissions that are submitted to LPAs so limited resources are not wasted on reviewing poor quality work. Currently it is estimated that 60% of reports are of a satisfactory standard and 40 % are not acceptable. Good quality submissions could be rewarded with a more streamlined/fast track process through planning.

An open discussion was then had by all.

It was stated that the proposed scheme has a quality mark/declaration signed by an appropriate person – who signs that the work has followed CLR11 and that a quality product has been produced.

It was acknowledged that there was benefits to industry for such schemes as delays would be at a minimum and benefits to regulators that they could focus resources where most needed.

It was acknowledged that planning resources were limited so such a scheme could help streamline a system.

SiLC explained that they supported improving standards and keen to bring the brownfield community working more closely together however they were uncomfortable that only minimum standards were looking to be met. They felt that chartered was not a sufficient level to be signing off as it was felt that just being chartered did not necessarily identify with experience.

Why are the EA choosing to focus on the planning scheme when they were not the primary regulator, why not focus on a scheme for Pollution Prevention & Control (PPC) where they are the primary regulator.

How does SoBRA fit into this scheme? It was felt that a quality product could have parts signed off by competent people in their fields such as risk assessment - SoBRA.

CIEH confirmed that they supported raising standards but felt what was being proposed was already in existence with SiLC. CIEH felt that the SiLC scheme provides the quality assurance that is needed and is backed by many of the professional institutions that work in brownfield.

It was discussed that planners should reject more substandard planning applications rather than waste time reviewing. It was argued that this is hard to do as LPAs are under a lot of pressure to not hinder development and there are limited options available now to reject. Therefore if a quality product is required (supported by an agreed system) then reduced resources could focus on the poorer quality submissions. A quality mark could help with decision making with the knowledge that an acceptable standard has been met and signed off.

Could every submission not just be signed by a SiLC? The difficulty with this is that this could be too restrictive/uncompetitive as there are currently only 150 SiLCs. The person signing the declaration needs to understand what they are signing. The individual needs to go through a process that the right level of review and checking has been undertaken before signing the product is fit for purpose.

The idea of involving the chartered individual is they are putting their professionalism on the line by confirming that the correct amount of peer review has been undertaken. However professional bodies also need to take action if people get it wrong.

There would need to be a reminder of what the obligations of chartership stood for and chartered individuals would not be able to sign off the product if they were not suitably qualified and experienced in the brownfield sector to assess what has been produced.

It was felt by some that a SiLC is the ideal person but others felt that others within industry could also be relevant and have the correct skills set without being a SiLC. Perhaps people with less experience could still sign off the quality product but with more peer reviewing required ?

When discussing the right level of competency, the question was raised whether this is the point why companies are required to have professional indemnity insurance. Are we not over-complicating? It is common practice in other professions where chartered individuals are required to sign off such as accountancy and land transactions. That professional person still needs to ensure that they are content with what they are signing off.

Using the existing skills development framework would be key with links to SoBRA as a specialism and other disciplines as specialisms. A quality mark creates the onus on the company to have capable people working within their companies. It therefore will require them to invest in their staff.

Such a scheme could also help meet the requirement of a competent person in line with the NPPF.

SoBRA members also want to demonstrate their skills and how they fit into a skills framework would help them achieve this.

The person signing off the overall quality product is not going to have expertise in all areas which is where they would rely on others with the right skills set.

It is envisaged such a scheme would be voluntary.

If the scheme was mandatory it was suggested that between 300-500 SiLCs would be needed. This is not possible in the timeframe and therefore by stating that documents need to be signed off by a SiLC would be considered anticompetitive and would stifle development therefore would not be acceptable to government.

There was concern that the discussion paper did not reference best practice/good practice but minimum standards.

Others felt that the paper was well considered and presented the nub of the issue. A quality product was required and if the EA are supporting then such a scheme has a recognised driver and industry would be supportive especially if lighter touch regulations were the result and delays reduced. It was acknowledged that delays in planning costs industry large sums of money.

NHBC would not insist on this but welcome measures to raise standards and would like to see how this develops.

The CL:AIRE Definition of Waste Code of Practice was cited as an example where the regulator has stepped back and allowed industry to perform a regulatory role. The

regulator always maintains the right to step in if environmental harm is occurring and also to carry out an audit to ensure standards are being maintained. This is supported with a regulatory position statement.

If a quality product system was developed, the EA would look to produce a similar system with a position statement to support the scheme and audit to ensure the scheme is performing.

It was acknowledged that such a scheme would need to be wider than just the EA and therefore are the EA planning to engage with CLG and all local authorities? The EA explained that they have liaison teams with Local Planning Authorities through the sustainable places teams. It was acknowledged that local authorities would need to buy into such a scheme but it could be seen to help local authorities reject poor quality submissions.

The EA would look to liaise with the Royal Town Planning Institute and Planning Officers Society as well.

CIEH felt that it is important not to reinvent a scheme that already exists and said it would not support a parallel scheme.

From the EAs perspective the product must be fit for purpose and the declaration would need to be signed off by a competent chartered person. It is important to define what this means.

Overall there was positive feedback for the Professional Standards Sub Group to move forward on the first three next steps identified in the accompanying paper titled "Land Forum – Raising Standards in Land Contamination Assessment: Summary of Proposed Scheme".

This included:

1. Preparation of a document describing the scheme as a whole
2. Develop a flowchart/checklist to guide the auditing/checking process
3. Prepare a declaration to make sure the Chartered person knows what they are endorsing

These would be brought to the next Land Forum meeting for discussion.

Action: Professional Standards Sub Group

It was requested that all members circulate the paper to their membership groups that they represent on the Land Forum and ask for feedback on the scheme and feed any challenges/questions about the scheme by 9th July 2014. These challenges/questions will be collated and reviewed as the scheme is developed further.

Action: ALL – provide challenges/questions on proposed new scheme.

Howard Price representing CIEH and Theresa Kearney representing Northern Ireland Environment Agency left the meeting.

7. Presentation by Mike Smith on “How British Standards Institute works and how the Land Forum can be more involved and track the development of new standards”

Mike Smith (MS) gave a brief presentation on how the British Standards Institute works and its interaction with International Standards Committee. MS explained that he tries to disseminate standards that are being updated/developed to encourage people to interact and comment but it is difficult to do this all the time as there are many.

MS highlighted which standards are in the pipeline to be updated and welcomed the opportunity to keep the Land Forum updated on standards that they may wish to comment on. It was agreed that there should be a standard item on Land Forum agenda to cover this.

It was agreed that NH will upload the presentation that Mike Smith gave onto the Land Forum website with the minutes.

Action: NH to ensure that “Standards” is maintained as an agenda item to ensure review of forthcoming items is discussed. NH to also upload the presentation onto the dedicated web page..

8. AOB: C4SLs & Land Forum

SL-B explained that it had been raised to him as chair whether the Land Forum should have a role to play in developing a guide to replace PPS23.

It was acknowledged that CLG do not plan to issue any further guidance, therefore if guidance is needed should the Land Forum develop something collectively? What would be the purpose? It was felt that with the publication of the C4SLs and policy companion document that guidance in how the C4SLs could be used in relation to Planning could be useful to try and assure that adoption of the C4SLs is approached consistently.

There was some uncertainty as to CIEH’s position on C4SLs.

ACTION: Frank Evans and Andrew Wiseman offered to follow up with CIEH.

9. AOB: Brownfield First Policy

SL-B explained that recently in his Mansion House speech the Chancellor had discussed encouraging housing development on brownfield land and wondered whether the Land Forum should have a view. Julia Thrift said that the TCPA was very concerned about the Chancellor’s proposal that Local Development Orders should be used to deliver housing on brownfield sites as this could result in local authorities losing control over the location and quality of housing in their areas. It was agreed that very little detail was provided in the Chancellor’s speech and therefore further clarity is required from CLG. It was acknowledged that funding levels had not been clarified and how it was to be implemented across the country.

NH was asked to follow up with CLG to seek clarification about the Chancellor’s Mansion House speech.

ACTION: NH

10. Future Direction of Land Forum

Euan Hall queried what was the future direction of the Land Forum because at present it was becoming a highly technical arena again which he felt it had tried to steer away from previously? He felt that if it continues with highly technical discussion points the Land Forum runs the risk of losing members (particularly those within the planning sector). EH feels that a land use strategy needs to be identified. EH felt that the Land Forum could be looking at mosaic habitats, heat pollution and inner cities open space. It was felt that trying to define what brownfield Land realistically is available would be a good starting point.

Julia Thrift said that the TCPA has been arguing for some time that England needs a national spatial plan in order to make sensible decisions about the location of future development and that England is the only developed country that doesn't have a spatial strategic plan.

It was felt that the main Land Forum should have a strategic role and if technical matters need to be discussed that perhaps these could be undertaken by working groups.

EH agreed to develop in draft some strategic ideas that the Land Forum should be considering.

ACTION: EH prepare some strategic areas that could be discussed at the next meeting.

11. Any other Business

As no further items were raised the meeting was brought to a close.

12. Date of next meeting

It is proposed that the next meeting will be held end of Oct early November subject to room availability.